

The Administrative Law Judge found claimant has an 18 percent permanent partial disability based on functional impairment for bilateral upper extremity injuries. The ALJ relied on the opinions of Dr. Blake C. Veenis, the court-appointed medical examiner. Claimant contends the ALJ should have given equal weight to the opinions of Dr. C. Reiff Brown, the physician who evaluated claimant's injuries at the request of claimant's counsel. Respondent, on the other hand, contends the ALJ erred by including impairment for carpal

tunnel syndrome on the left because, according to respondent, successful surgery eliminated the impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence, the Appeals Board concludes the Award should be affirmed.

In 1993 claimant began experiencing severe bilateral upper extremity problems from her work as an admissions clerk and receptionist in the medical records department of respondent. Claimant first saw her personal physician, Dr. Ray Allen. Dr. Allen referred claimant to Dr. E. O. Abay. Dr. Abay diagnosed bilateral carpal tunnel syndrome and, in July 1994, stated his opinion that this condition was work related. Claimant subsequently underwent surgery, including carpal tunnel release on the left and trigger thumb release on the left.

The only issue on appeal is the nature and extent of the permanent impairment. The record includes ratings by two physicians.

Dr. Brown saw claimant in September 1996. He diagnosed overuse syndrome, including bilateral carpal tunnel syndrome, ulnar cubital syndrome on the right, left shoulder tendinitis, and stenosing tendinitis of the left thumb. Dr. Brown initially rated the impairment as 35 percent of the whole person. When Dr. Brown saw claimant again in October 1998, he changed the rating to 27 percent of the whole person. His ratings included impairment in both the left and right upper extremities.

Dr. Veenis evaluated the claimant's impairment at the request of the ALJ. Dr. Veenis examined claimant on two occasions, December 3, 1996, and June 7, 1999. Following the second examination, Dr. Veenis rated the impairment as 18 percent of the whole person, including 16 percent to the whole person for impairment in the left upper extremity and 2 percent to the whole person for impairment to the right upper extremity.

Claimant argues that the rating by Dr. Brown should be given weight along with the opinion of Dr. Veenis. In this instance, the Board agrees with the ALJ's decision to adopt the rating by the court-appointed independent medical evaluator. The opinion of the court-appointed physician should not be blindly adopted in all instances. The statute merely requires that the opinion of the court-appointed physician be considered. The court-appointed physician should, on the other hand, be free from any bias. Where the opinions of the court-appointed physician appear otherwise consistent with the nature of the injury or injuries and appear to properly apply the *AMA Guides to the Evaluation of Permanent Impairment*, it is reasonable to adopt the opinions of the court-appointed physician. The Board considers it reasonable to do so here.

Respondent argues the Board should exclude any impairment for the carpal tunnel condition on the left, arguing that the surgery cured the carpal tunnel problems on the left. But both rating physicians have included rating on the left that included the carpal tunnel condition. Both point out the *Guides* make no separate provision for operated carpal tunnel syndrome, only ratings based on the severity of the condition. Both considered it appropriate to include ratings for claimant's left upper extremity, and the Board does also.

The Board otherwise agrees with and affirms the finding and conclusions by the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on February 2, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
 Bradley C. Ralph, Dodge City, KS
 Pamela J. Fuller, Administrative Law Judge
 Philip S. Harness, Director